

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD LEE PROW, individually and
d/b/a Rochester Topsoil, Inc.;
DONALD BRYCE PROW, individually
and d/b/a Rochester Topsoil, Inc.;
and ROCHESTER TOPSOIL, INC.,

Defendants.

05-1452 RHK/JSM

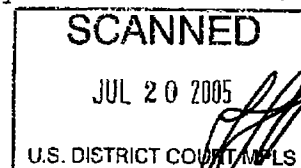
Civil Action No.

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretary of the Army acting through the United States Army Corps of Engineers (the "Corps"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under sections 309(b), 309(d), and 404 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b), 1319(d), and 1344 to obtain injunctive relief and civil penalties against Donald Lee Prow, individually and d/b/a Rochester Topsoil, Inc. ("Don Prow"); Donald Bryce Prow, individually and d/b/a Rochester Topsoil, Inc. ("Bryce Prow"); and Rochester Topsoil, Inc. (collectively "Defendants"), for the



discharge of pollutants into waters of the United States in or about Rochester, Olmsted County, Minnesota, without authorization by the Corps, in violation of CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344; for the Defendants' failure to perform mitigation required under the permit issued by the Corps, in violation of CWA section 404, 33 U.S.C. § 1344; and for the Defendants' failure to comply with an Administrative Order issued by the EPA, in violation of CWA section 309, 33 U.S.C. § 1319.

2. In this action, the United States seeks (1) to enjoin the discharge of pollutants into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), at their own expense and at the direction of the EPA and/or the Corps, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in CWA sections 309(d) and 404(s), 33 U.S.C. § 1319(d) and 1344(s).

AUTHORITY AND NOTICE

3. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519, and in accordance with CWA sections 309(b), 309(d), 404, and 506, 33 U.S.C. §§ 1319(b), 1319(d), 1344, and 1366.

4. Notice of this action has been given to the State of Minnesota pursuant to CWA sections 309(b) and 404(s), 33 U.S.C. §§ 1319(b) and 1344(s).

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to CWA sections 309(b) and 404(c), 33 U.S.C. §§ 1319(b) and 1344(s), and 28 U.S.C. §§ 1331, 1345, and 1355.

6. Venue is proper in the District of Minnesota pursuant to CWA sections 309(b) and 404(c), 33 U.S.C. §§ 1319(b) and 1344(s), and 28 U.S.C. §§ 1391(b) and 1391(c), and 1395(a), because the Defendants reside in this District and conduct business in this District, the subject property is located in this District, and the violations alleged herein occurred in this District.

THE PARTIES

7. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and in accordance with CWA sections 309(b), 309(d) and 506, 33 U.S.C. §§ 1319(b), 1319(d), and 1366.

8. Defendant Don Prow is a private individual residing in or near Rochester, Minnesota. Don Prow is an officer and/or owner of Defendant Rochester Topsoil, Inc. The United States brings this action against Don Prow in his individual capacity

and in his capacity as an officer, employee, and/or agent of Rochester Topsoil, Inc.

9. Defendant Bryce Prow is a private individual residing in or near Rochester, Minnesota. Bryce Prow is the son of Defendant Don Prow. Bryce Prow is an officer and/or owner of Rochester Topsoil, Inc. The United States brings this action against Bryce Prow in his individual capacity and in his capacity as an officer, employee, and/or agent of Rochester Topsoil, Inc.

10. Defendant Rochester Topsoil, Inc. is a corporation organized under the laws of the State of Minnesota. Rochester Topsoil, Inc. has, or has had, a corporate address of 1833 16 $\frac{1}{2}$ Street, N.W., Rochester, Minnesota, and/or 516 17th Ave. NW, Rochester, Minnesota.

STATUTORY AND REGULATORY AUTHORITY

11. CWA sections 301(a) and 404(a), 33 U.S.C. §§ 1311(a), 1344(a), prohibit the discharge of pollutants, including dredge and fill material, into navigable waters except in compliance with, inter alia, a permit issued by the Corps pursuant to CWA section 404, 33 U.S.C. § 1344.

12. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

13. CWA section 309(a), 33 U.S.C. § 1319(a), authorizes the Administrator of EPA to issue administrative compliance orders to any person found to be in violation of CWA section 301, 33 U.S.C. § 1311.

14. CWA section 309(a)(3) and 309(b), 33 U.S.C. §§ 1319(a)(3) and 1319(b), authorizes the Administrator of EPA to issue an order requiring compliance or to commence a civil action in federal district court for appropriate relief, including a temporary or permanent injunction and/or assessment of a civil penalty, when she finds that any person is in violation of CWA sections 301 or 404, 33 U.S.C. §§ 1311 and 1344.

15. CWA section 404(s), 33 U.S.C. § 1344(s), authorizes the Corps to issue an order requiring compliance or to commence a civil action in federal district court for appropriate relief, including a temporary or permanent injunction and/or assessment of a civil penalty, when it finds that any person is in violation of CWA sections 301 or 404, 33 U.S.C. §§ 1311 and 1344.

16. CWA sections 309(d) and 404(s), 33 U.S.C. §§ 1319(d) and 1344(s), provide that violators of CWA sections 301 and 309, 33 U.S.C. §§ 1311 and 1319, are subject to injunctive relief and civil penalties of up to \$25,000 per day for each violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations,

61 Fed. Reg. 69,360-69,361 (December 31, 1996), such violators are also subject to civil penalties of up to \$27,500 per day for each violation occurring after January 30, 1997. Such violators are further subject to civil penalties of \$32,500 per day for each day of violation after March 15, 2004, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 69 Fed. Reg. 7,121-7,127 (Feb. 13, 2004).

17. The term "person" is defined in CWA section 502(5), 33 U.S.C. § 1362(5), as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

18. The term "pollutant" is defined in CWA section 502(6), 33 U.S.C. § 1362(6), as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

19. The term "discharge of a pollutant" and the term "discharge of pollutants" are defined in CWA section 502(12), 33 U.S.C. § 1362(12), to include inter alia "any addition of any pollutant to navigable waters from any point source[.]"

20. The term "discharge of dredged material" is defined by 40 C.F.R. § 232.2, in pertinent part, as "any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States." The term includes, but is not limited to, "[a]ny addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation."

21. The term "fill material" is defined by 40 C.F.R. § 232.2 as "any 'pollutant' which replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body for any purpose."

22. The term "discharge of fill material" is defined by 40 C.F.R. § 232.2 to include in pertinent part "the addition of fill material into waters of the United States." The term generally includes, without limitation, "[p]lacement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; [and] property

protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments[.]”

23. CWA section 502(14), 33 U.S.C. § 1362(14), defines the term “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

24. CWA section 502(7), 33 U.S.C. § 1362 (7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

25. The term “waters of the United States,” as defined at 33 C.F.R. § 328.3(a) and 40 C.F.R. §§ 230.3(s) and 232.2, includes, inter alia: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters, including interstate wetlands; (iii) tributaries of such waters; and (iv) wetlands adjacent to such waters or their tributaries.

26. The term “wetlands” is defined at 33 C.F.R. § 328.3(b) and 40 C.F.R. §§ 122.2 and 230.3(t) and 232.2 to include, inter alia, “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient

to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

27. The term "adjacent" is defined by 40 C.F.R. § 230.3 as "bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are 'adjacent wetlands.'"

28. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

29. CWA section 309(d), 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates CWA section 301(a), 33 U.S.C. § 1311(a).

GENERAL ALLEGATIONS

30. The Defendants are "persons" within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

31. The real property which is the subject of this complaint is located at the SE 1/4 of Section 23 and the SW 1/4 of Section 24, Township 106 North, Range 14 West, Rochester, Olmsted County, Minnesota ("the Site").

32. At all times relevant to this action, one or more of the Defendants either owned, leased, or otherwise controlled the Site and/or controlled the activities that occurred on the Site.

33. The Site consists of a parcel shaped in a near rectangle and is approximately 100 acres in size. The west boundary of the Site abuts U.S. Highway 63, which runs roughly north and south. The Site is divided by the section line separating Section 23 and Section 24. The portion of the Site within Section 23 lies to the west of the section line and the portion of the Site within Section 24 lies to the east of the section line.

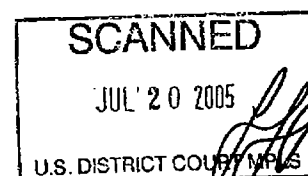
34. Willow Creek generally runs through the Site from west to east.

35. Willow Creek flows into Bear Creek. Bear Creek flows into the Zumbro River. The Zumbro River flows into the Mississippi River. The Mississippi River is an interstate water body.

36. Willow Creek is a "water of the United States" within the meaning of 40 C.F.R. §§ 230.3(s) and 232.2.

37. At one time, the Site contained approximately 73 acres of wetlands. The wetlands on the Site are or were one of the last remaining diverse high quality or high value wetlands within the vicinity of the Site.

38. The wetlands on the Site are adjacent to Willow Creek.



39. At all material times, the Site contained "waters of the United States," including wetlands, within the meaning of 40 C.F.R. §§ 230.3(s) and 232.2.

40. The water bodies on the Site described in paragraphs 36 through 38 constitute "waters of the United States" within the meaning of 40 C.F.R. §§ 230.3(s) and 232.2.

FACTUAL ALLEGATIONS

41. In May 1995, one or more of the Defendants, through his or their agents, submitted an application to the Corps for a permit to be issued in accordance with CWA section 404, 33 U.S.C. § 1344. Don Prow was listed as the Applicant. In the application, the Defendants sought authority to fill approximately 19.43 acres of wetlands, and convert 16.52 acres of wetlands to open water aquatic habitat, in Sections 23 and 24.

42. On February 14, 1996, the Corps issued to Don Prow, d/b/a Rochester Topsoil, Inc. ("Prow"), a Department of the Army Permit No. 93-07006-IP-BCN (the "permit"). A true and accurate copy of the permit is attached to this complaint as Exhibit A.

43. The permit authorized Prow "to discharge fill material in 14.16 acres of cropped wetland and excavate in 13.49 acres of cropped wetland adjacent to Willow Creek" within Section 23 and a small portion of Section 24. The location of all work authorized under the permit was specified in drawings, labeled 1993-07006-

IP-BCN, pages 1 through 3 through 3 of 3, that were provided with and attached to the permit.

44. The permit did not authorize any filling of wetlands in Section 24, but did authorize some excavation in the portion of Section 24 that was adjacent to the areas of excavation allowed in Section 23.

45. The permit provided, "The time limit for completing the work authorized ends on December 31, 1998."

46. The permit contained various "Special Conditions," including Special condition 1, which required Prow to mitigate for the loss of wetlands to be filled by creating approximately 7.1 acres of wetlands around the open water areas at the project site, as well as 20.51 acres of wetland at a nearby location known as "Rock Dell Farm." In addition, Special condition 3 required all mitigation work to be completed prior to or concurrent with the work authorized by the permit.

47. Defendant Bryce Prow signed the permit on behalf of Prow on February 9, 1996.

48. After signing the permit and prior to December 31, 1998, the Defendants and/or those acting on their behalf removed topsoil from, and excavated a pond within, the permitted area of the Site. In addition, the Defendants and/or those acting on their behalf excavated a ditch ("Ditch No. 4") both within and outside of the permitted area of the Site. In the course of this

activity, between 6-10 inches of topsoil was excavated within the permitted area, dredged material from the pond was deposited into approximately .52 acres of wetlands within the permitted area, and dredged material from the portion of Ditch No. 4 within the permitted area was deposited into approximately .28 acres of wetlands within the permitted area, along the south side of Ditch No. 4. While the dredged material from Ditch 4 was in the area covered by the permit, the permit allowed for excavation to occur in that area, but not fill.

49. Although the discharges described in paragraph 48 occurred in locations authorized by their permit, the Defendants did not perform any corresponding mitigation, either prior to or concurrently with their work, as required. In fact, to date the Defendants have not performed any of the mitigation required by their permit.

COUNT I

DISCHARGE OF POLLUTANTS WITHOUT A PERMIT

50. The United States incorporates herein by reference the allegations contained in paragraphs 1-49.

51. In or about December 1998-January 1999, and/or at other times more fully known to the Defendants, the Defendants and/or persons acting on their behalf used a backhoe, excavator, and/or other heavy equipment to excavate, dredge, and/or channel-clear portions of Willow Creek and the South Fork of Willow Creek

within Section 24, on portions of the Site not covered by the permit. During the course of these unpermitted activities, the Defendants removed vegetation and topsoil, dredged spoil, soil, rock, sand and other material from Willow Creek and the South Fork of Willow Creek, and subsequently discharged these materials onto wetlands within Section 24.

52. In or about December 1998-January 1999, and/or at other times more fully known to the Defendants, the Defendants and/or other persons acting on their behalf used a backhoe, excavator, and/or other heavy equipment to excavate Ditch 4, and other adjacent ditches that drain to Willow Creek, within Sections 23 and 24, on portions of the Site not covered by the permit. The ditches excavated in the course of this work are known as "Ditch 1," "Ditch 2," "Ditch 3," "Ditch 4" and "Ditch 5." Defendants' excavation of Ditch 3 altered the dimensions of a preexisting fork of Willow Creek known as the "South Fork" of Willow Creek. During the course of these activities, the Defendants removed vegetation and topsoil, dredged spoil, soil, rock, sand and other material, and subsequently discharged these materials onto wetlands within Sections 23 and 24.

53. The Defendants do not have, and have never had, a permit issued under section 404 of the CWA, 33 U.S.C. § 1344, authorizing discharges of dredged or fill material into navigable waters as described in paragraphs 51 and 52, above.

54. Following the expiration of their permit, in April 1999, and/or at other times more fully known to the Defendants, the Defendants and/or other persons acting on their behalf used a backhoe, excavator, scraper and/or other heavy equipment to discharge vegetation and topsoil, dredged spoil, soil, rock, sand and other material onto wetlands within Section 23.

55. In the late summer or fall of 2000, the Defendants and/or other persons acting on their behalf used a backhoe, excavator, and/or other heavy equipment to excavate, dredge, and/or fill additional wetlands within Section 24. During the course of these activities, the Defendants removed vegetation and topsoil, dredged spoil, soil, rock, sand and other material from the wetlands, and subsequently discharged or redeposited these materials onto wetlands within Section 24.

56. The Defendants do not have, and have never had, a permit issued under section 404 of the CWA, 33 U.S.C. § 1344, authorizing discharges of dredged or fill material into navigable waters as described in paragraphs 54 and 55, above.

57. The wetlands into which the Defendants, and/or other persons acting on their behalf, discharged dredged and/or fill material are "waters of the United States" as defined in 40 C.F.R. § 230.3(s) and thus "navigable waters" as defined at CWA section 502(7), 33 U.S.C. § 1362(7).

58. The Defendants, and any persons acting on their behalf, as alleged in paragraphs 51-55 above, are "persons" within the meaning of the definition set forth in CWA section 502(5), 33 U.S.C. § 1362(5).

59. The dredged spoil and other material removed from the Willow Creek, Ditches 1 through 5, and other wetlands within Sections 23 and 24, referenced in paragraphs 51-55 above, constitute "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2, as well as "pollutants" within the meaning of CWA section 502(6), 33 U.S.C. § 1362(6).

60. The backhoe, excavator, and/or other heavy equipment referenced in paragraphs 51-55, above, constitute "point sources" within the meaning of CWA section 502(14), 33 U.S.C. § 1362(14).

61. Each instance of the Defendants' placement of vegetation and topsoil, dredged spoil, soil, rock, sand and other material into the wetlands described in paragraphs 51-55 above constitutes a "discharge of a pollutant" or "discharge of pollutants" within the meaning of CWA section 502(12), 33 U.S.C. § 1362(12) and within the scope of CWA section 404, 33 U.S.C. § 1344.

62. Each day that unpermitted discharges of dredged or fill material continues to fill wetlands on the Site constitutes a separate day in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

63. The Defendants have violated and continue to violate CWA section 301(a), 33 U.S.C. § 1311(a), by their unauthorized discharges of dredged spoil or fill material into waters of the United States, including wetlands, at the Site as described in paragraphs 51-55, above.

64. Unless enjoined by order of this Court, the Defendants will continue to violate CWA section 301, 33 U.S.C. § 1311, in the manner described in paragraphs 51-55 above.

65. The Defendants are subject to injunctive relief and civil penalties of \$27,500 per day for each violation, through March 15, 2004, referred to in paragraphs 51-55 above, pursuant to CWA sections 309(b) and 309(d), 33 U.S.C. §§ 1319(b) and 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 61 Fed. Reg. 69,360-69,361 (December 31, 1996). The Defendants are further subject to civil penalties of \$32,500 per day for each day after March 15, 2004 that unpermitted discharges of dredged or fill material have remained onsite, pursuant to CWA section 309(b) and (d), 33 U.S.C. §§ 1319(b) and 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 69 Fed. Reg. 7,121-7,127 (Feb. 13, 2004).

COUNT II

VIOLATION OF SECTION 404 PERMIT

66. The United States incorporates herein by reference the allegations of paragraphs 1-65.

67. The Defendants' failure to perform mitigation in accordance with their permit, as alleged in paragraphs 46-49 above, constitutes a violation of CWA sections 301(a) and 404(a), 33 U.S.C. §§ 1311(a) and 1344(a).

68. Each day the Defendants fail to perform the mitigation work required by the permit constitutes a separate day in violation of CWA sections 301(a) and 404(a), 33 U.S.C. §§ 1311(a) and 1344.

69. Unless enjoined by order of this Court, the Defendants will continue to violate CWA sections 301 and 404, in the manner described in paragraphs 46-49.

70. The Defendants are subject to injunctive relief and civil penalties of \$27,500 per day for each day of violation, through March 15, 2004, for failure to perform mitigation work referred to in paragraphs 46-49 above, pursuant to CWA section 309(b) and (d), 33 U.S.C. §§ 1319(b) and 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 61 Fed. Reg. 69,360-69,361 (December 31, 1996). The Defendants are further subject

to civil penalties of \$32,500 per day for each day after March 15, 2004 that the Defendants have failed to perform the mitigation work referred to in paragraphs 46 through 49, pursuant to CWA section 309(b) and (d), 33 U.S.C. §§ 1319(b) and 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 69 Fed. Reg. 7,121-7,127 (Feb. 13, 2004).

COUNT III

VIOLATION OF CWA SECTION 309 ADMINISTRATIVE COMPLIANCE ORDER

71. Plaintiff incorporates herein by reference the allegations of paragraphs 1-70, above.

72. Upon discovery of the discharge activities at the site, as described in paragraphs 1 through 71 above, EPA issued the Defendants an Administrative Compliance Order dated August 19, 1999, Docket No. V-404-AO-99-08 (the "August 19, 1999 Order"), pursuant to CWA section 309 (a), 33 U.S.C. § 1319(a).

73. The August 19, 1999 Order required the Defendants, inter alia, to cease further discharges of dredge or fill into wetlands; to submit within 30 days a Wetland Restoration Plan ("Plan") to EPA for approval; and to conduct activities to restore altered wetlands to the condition existing prior to the discharge activities of the Defendants, pursuant to the Plan approved by EPA.

74. The August 19, 1999 Order required the Defendants to submit their Plan within 30 days. On September 8, 1999, the Defendants advised EPA of their "intent to comply" with the Order, but requested additional time to devise an acceptable Plan.

75. EPA subsequently extended the Defendants' date to submit an acceptable Plan to December 15, 1999, and conditionally approved a portion of the Defendants' Plan in a letter dated January 12, 2000. EPA's January 12, 2000, letter specified that all work covered by the partial approval was to be completed by June 1, 2000. EPA approved the remainder of the Defendants' Plan on June 26, 2000, and required all work to be completed by August 12, 2000.

76. The restoration work in Defendants' approved Plan included, inter alia, the regrading of ditches back to pre-1998 elevations; the stabilization of banks on Willow Creek; the stabilization of restored wetlands through seeding, silt fencing, and other erosion controls; and monitoring to determine if vegetation performance standards were being met or corrective actions, such as reseeding, were required.

77. The Defendants did not timely complete the work in the Plan required by EPA to be completed by June 1, 2000. Nor did the Defendants timely complete the remaining work in the Plan required by EPA to be completed by August 12, 2000.

78. On October 25, 2000, EPA informed the Defendants of their noncompliance with the August 19, 1999 Order.

79. To date, the Defendants have failed to perform restoration work at the Site in the manner required by the Plan approved by EPA and the August 19, 1999 Order, in at least the following respects: the restoration of Ditch 1 was performed without seeding, wood fiber blankets, or the use of other required erosion controls; the restoration of Ditch 2 was performed without sufficient grading and without the proper installation of silt fences; the restoration of Ditch 5 was conducted with limited grading and without filling the ditch in the manner required by the Plan and the Order; the restoration of Ditches 3 and 4 was not commenced; with respect to Willow Creek, the dredged spoil was not removed to upland, a "check dam" was not installed, the banks were not stabilized, and erosion controls were not implemented; and, with respect to the South Fork of Willow Creek, the dredged spoil was not removed to upland.

80. The Defendants' failure to perform restoration work at the Site in the manner described in the Plan approved by EPA constitutes a violation of CWA section 309(a), 33 U.S.C. § 1319(a).

81. Each day the Defendants fail to perform restoration work at the Site in the manner described in the Plan approved by

EPA constitutes a separate day in violation of CWA section 309(a), 33 U.S.C. 1319(a).

82. Unless enjoined by order of this Court, the Defendants are likely to continue to violate CWA section 309(a), 33 U.S.C. § 1319(a), in the manner described in paragraphs 76-80, above.

83. The Defendants are subject to injunctive relief and civil penalties of \$27,500 per day for each violation, through March 15, 2004, referred to in paragraphs 76-80 above, pursuant to CWA sections 309(b) and 309(d), 33 U.S.C. §§ 1319(b) and 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 61 Fed. Reg. 69,360-69,361 (December 31, 1996). The Defendants are further subject to civil penalties of \$32,500 per day for each day after March 15, 2004 that the Defendants have failed to perform restoration work at the Site in the manner described in the Plan approved by EPA, pursuant to CWA section 309(b) and (d), 33 U.S.C. §§ 1319(b) and 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, 69 Fed. Reg. 7,121-7,127 (Feb. 13, 2004).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully requests that this Court order the following relief:

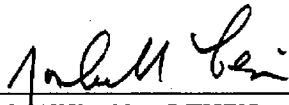
1. That the Defendants be permanently enjoined from discharging or causing the discharge of dredged or fill material or other pollutants into any waters of the United States except in compliance with the CWA;
2. That the Defendants be enjoined to undertake measures, at Defendants' own expense and at the direction of the EPA and/or the Corps, to effect complete restoration of the Site, to conduct the on site and off site mitigation as set forth in the permit, and/or to conduct off-site mitigation for irreversible environmental damage, as appropriate;
3. That the Defendants be assessed pursuant to CWA sections 309(d) and 404(s), 33 U.S.C. §§ 1319(d) and 1344(s), a civil penalty for each day of each violation of CWA sections 301(a), 309, and 404, 33 U.S.C. §§ 1311(a), 1319, and 1344;
4. That the United States be awarded costs, disbursements, expenses and attorney's fees in this action; and
5. That this Court grant Plaintiff, the United States of America, such other relief as the Court may deem just and proper.

Respectfully submitted,

KELLY A. JOHNSON
Acting Assistant Attorney General


Environment and Natural Resources
Division

Date: 7/20/2005


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Assistant U.S. Attorney
Attorney ID No. 142013
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600

OF COUNSEL:

ROBERT H. SMITH, ESQ.
Associate Regional Counsel
United States Environmental Protection Agency
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 886-0765

EDWIN C. BANKSTON, ESQ.
District Counsel
U.S. Army Corps of Engineers
St. Paul District
190 Fifth Street East
St. Paul, Minnesota 55101-1638
(651) 290-5500

FEB 14 1996

05-1452 RHK/ISM

Construction-Operations
Regulatory (93-07006-IP-BCN)

Mr. Jeffrey Broberg
McGhie & Betts Environmental Services
1648 Third Avenue S.E.
Rochester, Minnesota 55904

Dear Mr. Broberg:

This is the validated copy of the Department of the Army permit issued to Don Prow. Please be advised that the authorization hereby granted is contingent on the permittee's compliance with all conditions stated in the permit and its attachments.

This Federal permit does not authorize the permittee to commence the proposed activity without first obtaining any necessary State and/or local permits.

If you have any questions, call Mr. Bruce Norton at the Corps, (608) 784-8236.

Sincerely,

Ben Wopat
Chief, Regulatory Branch

Enclosures

NORTON CO-R
HAUGER CO-R
WOPAT CO-R

[Signature]
[Signature]
BW 186896

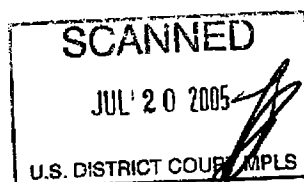


EXHIBIT A

DEPARTMENT OF THE ARMY PERMIT

Permittee Don Prow dba Rochester Topsoil, Inc.

Permit No. 93-07006-IP-BCN

Issuing Office St. Paul District
U.S. Army Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

You are authorized to discharge fill material in 14.16 acres of cropped wetland and excavate in 13.49 acres of cropped wetland adjacent to Willow Creek in conjunction with a gravel mining and commercial development project. This work will be done as shown on the attached drawings labeled 93-07006-IP-BCN, pages 1 of 3 through 3 of 3.

Project Location:

The project site is located in the SE 1/4 of Section 23, T106N, R14W; Olmsted County, Minnesota.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 1998. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall mitigate for the loss of 27.65 acres of wetland at two locations. Approximately 7.1 acres of shallow water fringe wetland would be created around the open water areas at the project site. In addition, 20.51 acres of wetland would be created at the Rock Dell farm located in the W1/2 of the NW 1/4 of section 34, T105N, R15W, Olmsted County, Minnesota. The various components of the compensatory mitigation plan are identified on the attached drawings numbered page 2 of 3 and 3 of 3.
2. The surface topsoil from the wetland portions of the project site shall be salvaged and used as a seed bank for both the onsite and off-site mitigation areas.
3. The mitigation work shall be completed prior to, or concurrent with the work authorized by this permit. Mr. Bruce Norton, of our La Crosse Field Office (608 784-8236), shall be contacted at least 10 days prior to the scheduled construction work.
- ✓ 4. A perpetual deed restriction shall be placed on these two mitigation sites to guarantee its preservation for wetland and wildlife resources. A draft deed restriction and submit it to our La Crosse Field Office for review. Upon our approval, the deed restriction shall be recorded with the Registrar of Deeds for Olmsted County and a certified copy provided to our La Crosse Field Office prior to the completion of the mitigation work.
- ✓ 5. Mitigation Monitoring - The permittee shall submit annual reports on the status of the mitigation site. The first report is due on December 31 after the first growing season following completion of the mitigation work, and subsequent reports shall be submitted on or before December 31st for the following 5 years (total of 6 reports). These reports shall include the following information:
 - a. All plant species, along with their estimated relative frequency and percent cover, shall be identified by using plots measuring 0.5 meter by 0.5 meter. A total of 3 random plots shall be located in the onsite mitigation area and 7 random plots in the Rock Dell mitigation site.
 - b. Vegetation cover maps, at a scale of one inch equals 100 feet, or larger scale, shall be prepared for each growing season.
 - c. Photographs showing all representative areas of the mitigation site shall be taken at least once each year during the period July 1 to September 30.
 - d. Surface water and groundwater elevations in the mitigation areas shall be recorded twice a month during April through October of each year. Monitoring of the Rock Dell site should occur in each of the proposed wetland impoundments. The location of each monitoring site shall be shown on the plan view.

e. The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine that the compensatory mitigation has not been fully satisfactory. Remedial work may include regrading and/or replanting of the mitigation site, or possibly the development of a new mitigation plan at another site. This responsibility shall extend for a period of 5 years beginning upon the completion of the mitigation work.

6. Refer to Standard Conditions attachment.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and

conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

D Bruce Brown (Vice President) *2-9-96*
(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Ben Wyzal *14 FEB 96*
(DISTRICT ENGINEER) (DATE)

for **J. M. WONSIK**
Colonel, Corps of Engineers
District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

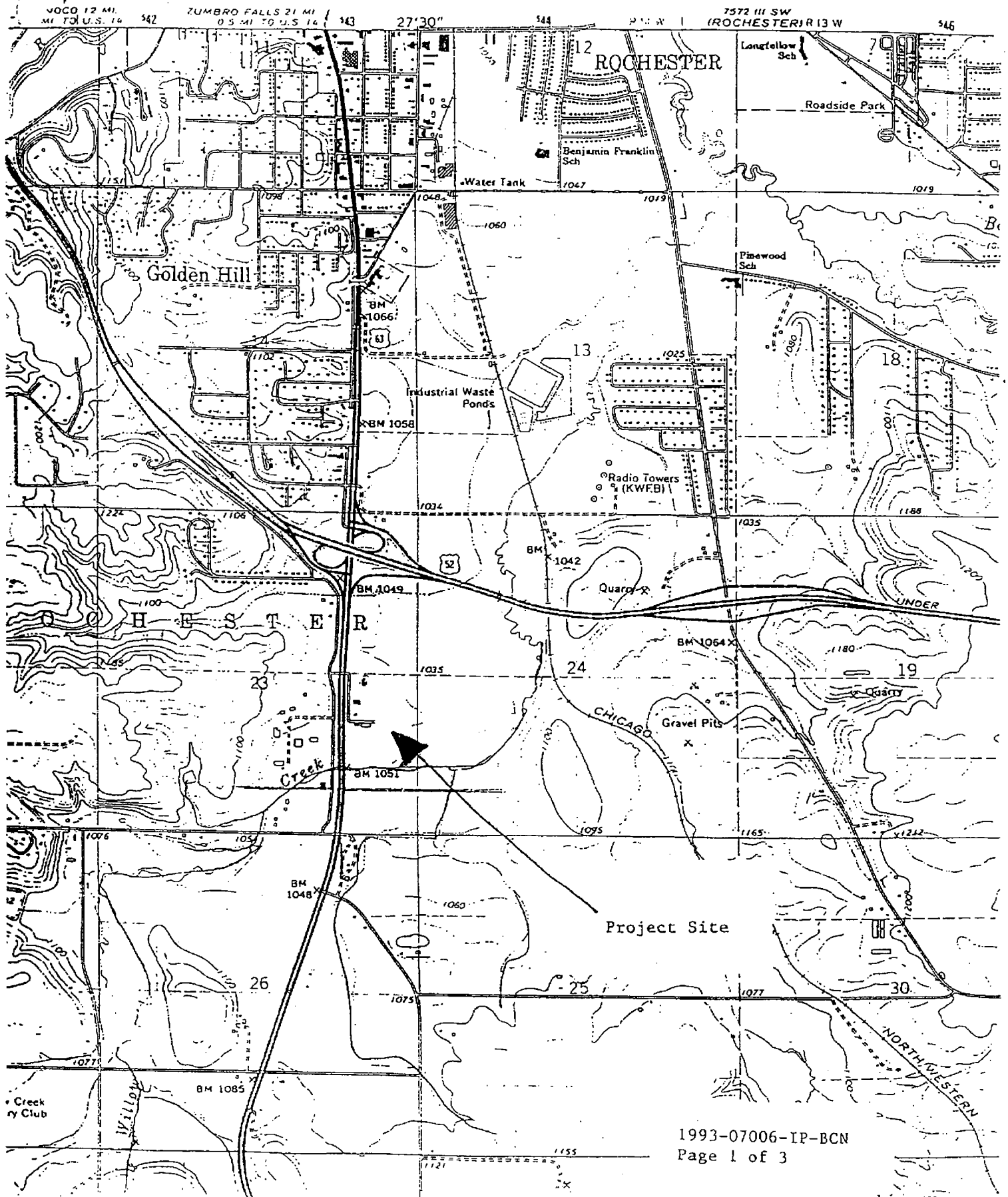
(TRANSFeree) (DATE)

In addition to general and special conditions, this permit is subject to the following standard conditions, as applicable:

1. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.
2. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.
3. If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark), the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to placement of any dredged material.
4. Upon completion of earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover, to prevent subsequent erosion.
5. All fill (including riprap), if authorized under this permit, must consist of suitable material free from toxic pollutants in other than trace quantities. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State Historic Preservation Officer (SHPO) must be notified prior to use of the new site. Evidence of this consultation with the SHPO will be forwarded to the St. Paul District Office.
6. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.
7. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.
8. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill and to immediately notify the State Department of Natural Resources and the U.S. Coast Guard at telephone number 800-424-8802.

INTERIOR
FY

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION



DON PROY
PROPERTY
CITY OF ROCHESTER

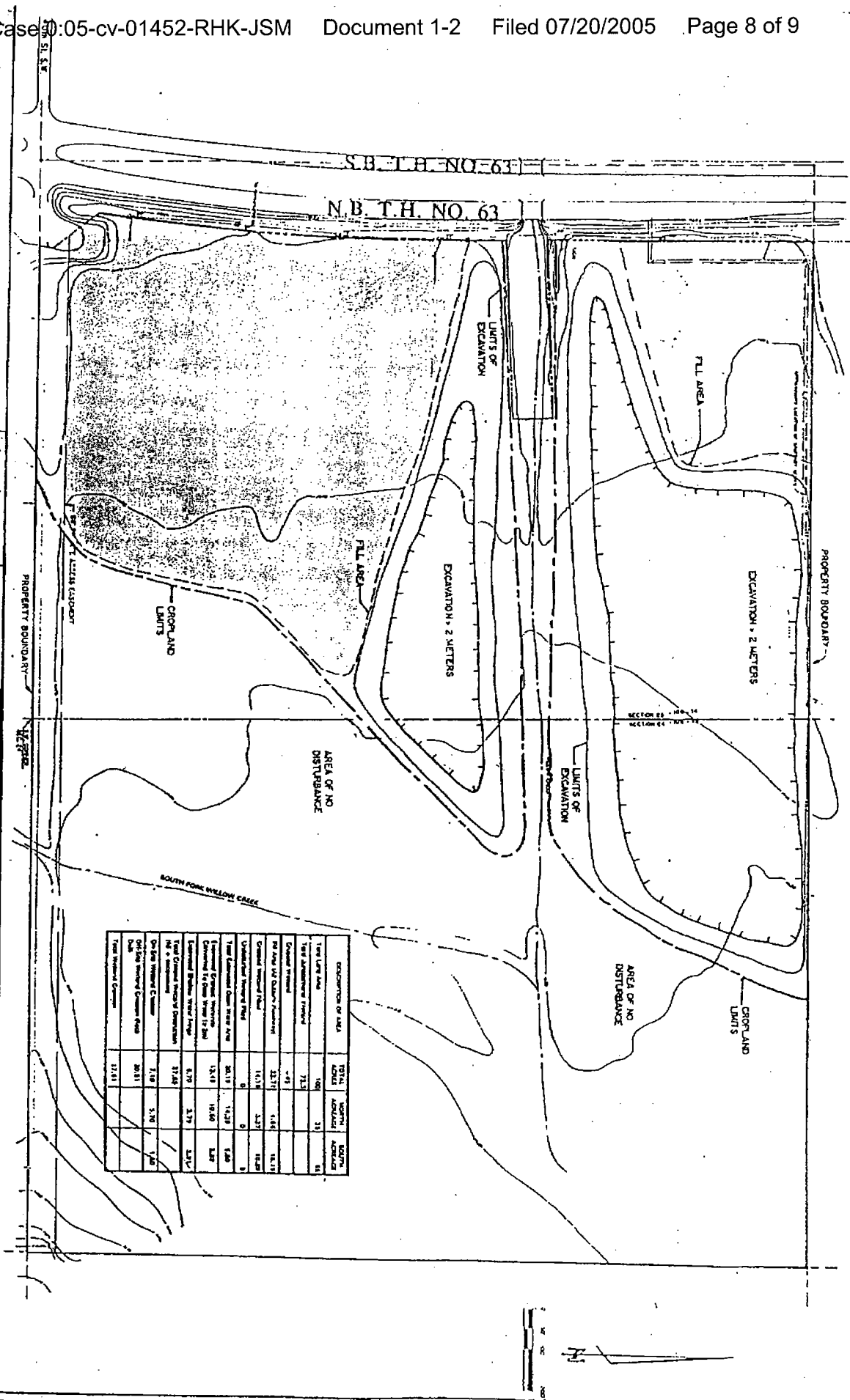
[illegible]

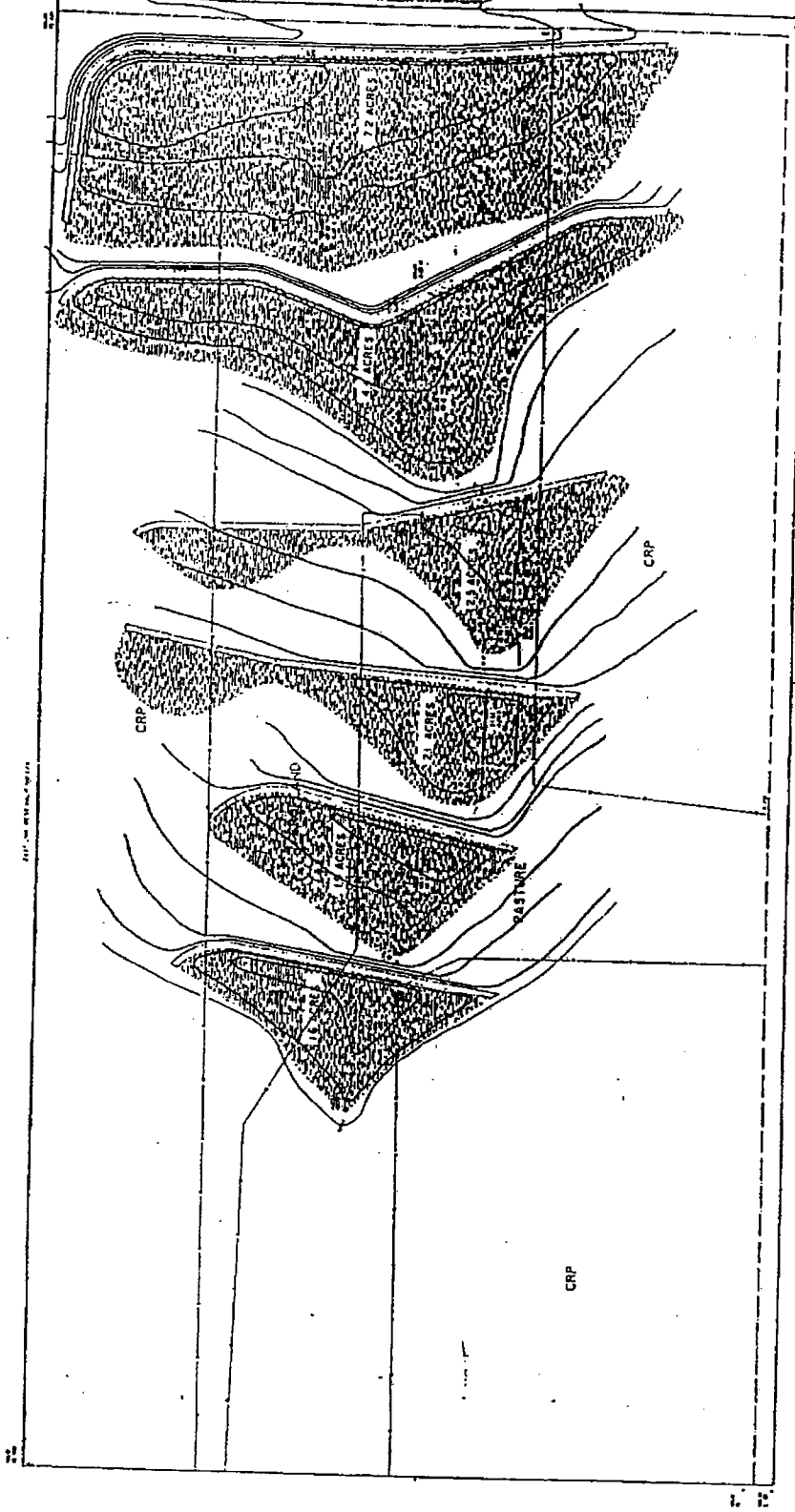
McGhie
Caring Urgent
CO
Betts, Inc.
Ind 5-7700, p. 34

1993-07006-IP-BCN
Page 2 of 3

DOUGLAS / BRUCE DOUGLAS
ROCHESTER TOWNSHIP, MI

ROCHESTER TOPSOIL INC.
FINAL FILL AND EXCAVATION PLAN





N.W. CORNER SEC. 34

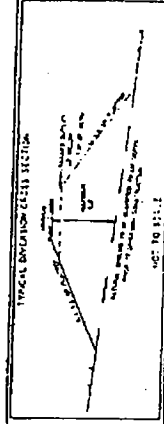
WEST CORNER SEC. 34

The wetland delineation was performed by NGS & S. Wetland (Environmental Services, Inc.) on the basis of a field inspection and the use of the National Wetland Inventory Map of 1981.

The wetland delineation was performed from field measurements taken by NGS & S. Wetland on October 15, 1991. The data on wetland is in the NGS & S. Wetland report.

The wetland delineation was performed from field measurements, and the data on wetland is in the NGS & S. Wetland report.

APPROXIMATE LAND USE BOUNDARY
DELIMITED WETLANDS
PROPOSED REPLACEMENT WETLANDS
EXISTING ON-SITE WETLANDS



WETLAND DELINEATION FOR
DON PROW
WEST 1/2 NW 1/4 SEC 34-105-15
DAWSON COUNTY, MINNESOTA

| | |
|------|----------|
| DATE | 10/15/91 |
| BY | NGS & S. |
| FOR | DON PROW |

| NO. | DATE | REVISION |
|-----|----------|----------|
| 1 | 10/15/91 | INITIAL |

DON PROW
WEST 1/2 NW 1/4 SECTION 34-105-15

WETLAND REPLACEMENT MAP

OJS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney? (Firm Name, Address, and Telephone)

Friedrich A. P. Siekert, U.S. Attorney's Office
300 South Fourth Street, Minneapolis, MN 55415
612 664-5600

DEFENDANTS

Donald Lee Prow, Donald Bryce Prow and Rochester
Topsoil, Inc.

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Gregory E. Korstad, Esq.
7900 Xerxes Ave. South
Bloomington, MN 55441

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for and One Box for Defendant)

- Citizen of This State ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4
Citizen of Another State ☐ 2 DEF ☐ 2 Incorporated and Principal of Business In Another State ☐ 5 DEF ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 DEF ☐ 3 Foreign Nation ☐ 6 DEF ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|--|--|--|
| <input type="checkbox"/> 110 Insurance | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 630 Liquor Laws | PROPERTY RIGHTS | <input type="checkbox"/> 450 Commerce/ICC Rates/etc. |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 640 R.R. & Truck | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 650 Airline Regs. | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 690 Other | SOCIAL SECURITY | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 360 Other Personal Injury | LABOR | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 362 Personal Injury- Med. Malpractice | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 365 Personal Injury- Product Liability | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input checked="" type="checkbox"/> 892 Economic Stabilization Act |
| | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 893 Environmental Matters |
| | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 894 Energy Allocation Act |
| | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 790 Other Labor Litigation | FEDERAL TAX SUITS | <input type="checkbox"/> 895 Freedom of Information Act |
| | <input type="checkbox"/> 380 Other Personal | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| | <input type="checkbox"/> 385 Property Damage Product Liability | | <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609 | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | | |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | Habeas Corpus: | | |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 530 General | | |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 535 Death Penalty | | |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 540 Mandamus & Other | | |
| <input type="checkbox"/> 290 All Other Real Property | | <input type="checkbox"/> 550 Civil Rights | | |
| | | <input type="checkbox"/> 555 Prison Condition | | |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Action for civil penalty & injunctive relief for violations of Clean Water Act, 33 U.S.C. 1311

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

DOCKETNUM

DATE 7-20-05 SIGNATURE OF ATTORNEY OF RECORD Friedrich A. P. Siekert

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE

SCANNED
MAG. JUDGE

JUL 20 2005

U.S. DISTRICT COURT Mpls



United States Attorney
District of Minnesota

600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

(612)664-5600

July 20, 2005

RECEIVED
05 JUL 20 PM 3:04
CLERK U.S. DIST COURT
MINNAPOLIS, MN

Richard Sletten, Clerk
United States District Court
202 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Re: United States v. Prow, et al.
Our File No. 2001V00783

Dear Mr. Sletten:

Enclosed for filing in a new case please find the Complaint and Exhibit A together with the Civil Cover Sheet.

Please indicate the assigned civil number, judge and date of filing on the enclosed copy of this letter.

Sincerely,

THOMAS B. HEFFELFINGER
United States Attorney

Friedrich A. Siekert

BY: FRIEDRICH A. P. SIEKERT
Assistant United States Attorney

FAPS:tmk
Enclosures

Civil No.: 05-1452 Judge: RHK Date of Filing: 7/20/05
ls lsm
Deputy Clerk